S.B.CIVIL WRIT PETITION NO.2265/2007

Gena Ram Tak
v.
State of Rajasthan & Ors.

Date of Order :: 20th August, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. G.R.Punia, for the petitioner.
Mr. S.N.Tiwari, Deputy Government Advocate.

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By this petition for writ a challenge is given to the order dated 3.8.2006 passed by the Divisional Commissioner, Jodhpur exercising powers under Sections 38 and 39 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as “the Act of 1994”). By the order aforesaid the Divisional Commissioner recorded a finding against the petitioner and declared him ineligible to contest election for any Panchayat Raj Institution in coming years.

While giving challenge to the decision of the Divisional Commissioner the contention of counsel for the petitioner is that (1)the order impugned deserves to be quashed being passed without affording an opportunity of personal hearing to the petitioner before imposing the penalty; and (2)the order impugned is bad in eye of law being a non-speaking and unreasoned order.

No reply to the writ petition has been filed, however, in pursuant to the order dated 21.5.2007 record of entire proceedings including the inquiry conducted by the Chief Executive Officer, Zila Parishad, Jodhpur is available for examination. From examination of record, I found that before imposing a penalty by the order impugned a notice of personal hearing was given to the petitioner and that was received by him on 12.5.2006 as it is apparent from the returned notice that bears signatures of the petitioner, those were put on 12.5.2006. The allegation of the petitioner that no opportunity of personal hearing was afforded to him, therefore, is having no force.

I have examined the order passed by the Divisional Commissioner and also the inquiry report given by the Executive Officer, Zila Parishad, Jodhpur. The petitioner was exonerated for allegations No.1 to 4, however, the charges No.5 and 6 were found partially proved. The sole discussion and findings given by the inquiry officer with regard to charges No.5 and 6 reads as follows:-

"<u>आरोप पत्र:- 5</u>

वर्ष 2002-2003 के वार्षिक बजट की स्वीकृति पंचायत समिति भोपालगढ़ से प्राप्त नहीं की गई। इस सम्बन्ध में आरोपी सरपंच द्वारा यह बताया गया है कि मुझे इसका ज्ञान नहीं था,

सचिव ने बजट स्वीकृत करवाने की कार्यवाही बताई, यह सचिव की भूल है चूँकि बजट स्वीकृत नहीं करवाया गया है, अत: यह आरोप सरपंच के विरूद्ध आंशिक रूप से सिद्ध होता है।

<u>आरोप पत्र :- 6</u>

वर्ष 2002-2003 के लिए निर्माण सामग्री आपूर्ति एवं माल ढुलाई के लिए आमंत्रित की गई निविदाओं में अनियमितता बरती गई है। इसके सम्बन्ध में आरोपी सरपंच द्वारा यह कार्यवाही विधिवत प्रक्रिया अनुसार सम्पादित करके के सम्बन्ध में कोई ठोस तथ्य प्रस्तुत नहीं किये गये है, केवल इसकी स्वीकृति ग्राम पंचायत की बैठक 1.8.02 के अनुसार सर्व सम्मति से प्राप्त किया जाना बताया।"

The inquiry officer while holding the petitioner guilty for the charges No.5 and 6 has not discussed any evidence on basis of which the charges were found proved. It is well settled that the allegations of misconduct against an elected representative of Panchayat Raj Institution should be proved by cogent findings. From entire record I do not find any evidence available to prove the allegations No.5 and 6. The instant case, therefore, is a case of no evidence. The Divisional Commissioner also failed to examine that the finding given with regard to allegations No.5 and 6 were not supported by any evidence. As a matter of fact the Divisional Commissioner has simply reproduced the findings given by the inquiry officer in the order dated 3.8.2006. Thus, I am in agreement with counsel for the petitioner that the order impugned is not a speaking

and reasoned order. The charges proved against the petitioner being not supported by any evidence deserves to be quashed.

Accordingly, this petition for writ is allowed. The order impugned dated 3.8.2006 passed by the Divisional Commissioner, Jodhpur, therefore, is quashed. The original record be sent to the office of Divisional Commissioner, Jodhpur immediately.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.